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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,513	01/23/2002	Anthony Brennan	1442026	9358

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HESLIN ROTHENBERG FARLEY & MESITI PC
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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 06/10/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/055,513

Applicant(s)

BRENNAN ET AL.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 19,20,22,33 and 37-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18,21,23-32,34-36,40 and 41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the subject matter set forth in claim 18, the "means for providing" set forth in claims 28 and 30, and the "method" language set forth in claims 34 and 40, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant's argue at pages 10-11 of the response filed April 28, 2003 claim 18 has been amended to provide antecedent basis, and claims 28 and 30 incorporate the specification and drawings under 112, sixth paragraph. However, the language found in claims 18, 28 and 30 is not present in the specification. It is noted claims 34 and 40 were not addressed in the response.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10, 16-18, 21, 23 and 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin '260.

The Martin '260 (Martin) reference (Figs. 11-15) discloses a system comprising: a body including a water inlet (at 107), an air inlet (at 105) and means for providing a plurality of jets 102,103; a water chamber 98,99; and an air chamber 100,101, as claimed.

Applicant's argue at pages 12-13 of the response Martin does not disclose attaching the system through a wall of a tub. However, the initial statement of intended use (hydrotherapy-tub), and all other functional implications related thereto (configured to be attached through a wall), have been considered but do not appear to impose any patentably distinguishing structure over that disclosed by Martin. Clearly, the claims only recite the "hydrotherapy-tub" as environment and the Martin system is capable of being used in the intended environment.

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4. Claims 1-10, 16-18, 21, 23-32, 34-36, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin and Gardenier et al.

The Martin system is used in a hydrotherapy-tub 93 (Fig. 8).

Re claims 24, 34 and 40, although the Martin system does not include an opening through a tub wall, as claimed, attention is directed to the Gardenier et al. (Gardenier) reference which discloses an analogous system which further includes an opening through a tub wall 11. Therefore, in consideration of Gardenier, it would have been obvious to one of ordinary skill in the art to associate an opening with the Martin tub wall in order to provide a more permanent system. It is noted Martin contemplates a permanent system in the bridging sentence of pages 4 and 5.

5. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin as applied to claims 1 and 28 above, and further in view of Guiler.

Although the water chamber of the Martin fluid flow system does not include conical structures, as claimed, attention is directed to the Guiler reference which discloses an analogous fluid flow system which further includes a water chamber 13 having a conical structure 18. Therefore, in consideration of

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Guiler, it would have been obvious to one of ordinary skill in the art to associate conical structures with the Martin fluid flow system in order to increase water flow velocity.

6. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin and Gardenier as applied to claims 24, 34 and 40 above, and further in view of Guiler.

To associate conical structures with the Martin fluid flow system would have been obvious to one of ordinary skill in the art in consideration of Guiler analogous to the discussion supra.

7. Applicant's remarks concerning claims 1 and 28 have been fully considered and have been previously addressed.

Applicant's arguments with respect to claims 24, 34 and 40 have been considered but are moot in view of the new ground(s) of rejection.

8. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', is positioned above the printed name and title.

Robert M. Fetsuga
Primary Examiner
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